

## Attachment 2:

### Proposed Draft Regulation to Reduce Greenhouse Gas Emissions by Requiring Commercial Businesses to Recycle

#### DRAFT PROPOSED REGULATORY TEXT

#### MANDATORY COMMERCIAL RECYCLING

TITLE 17:	PUBLIC HEALTH
DIVISION 3.	AIR RESOURCES
CHAPTER 1.	AIR RESOURCES BOARD
ARTICLE X.	MANDATORY COMMERCIAL RECYCLING

#### §9XXX0. Purpose.

The purpose of this ~~A~~article is to implement the Mandatory Commercial Recycling Measure provision of the Scoping Plan adopted by the ~~state~~Air Resources Board pursuant to §38561 of the Health and Safety Code.

#### §9XXX1. Definitions.

(a) Except as otherwise noted, the definitions of this ~~A~~article supplement and are governed by the definitions set forth in Chapter 2 (commencing with ~~§Section~~ 40100), Part 1, Division 30 of the Public Resources Code.

(b) In addition to the definitions incorporated under subdivision (a), the following definitions shall govern the provisions of this ~~a~~Aarticle.

(1) “Annual Report” means the electronic report, submitted annually by a jurisdiction, summarizing its progress in reducing solid waste, as required by

§41821 of the Public Resources Code and 14 California Code of Regulations §§18794-18794.6.

(2) "CalRecycle" means the Department of Resources, Recycling and Recovery.

(3) "Jurisdiction" means a city, county, city and county, or a regional agency that is approved by CalRecycle pursuant to §40975 of the Public Resources Code.

(4) "Business" means any commercial or public entity, including, but not limited to, a firm, partnership, proprietorship, joint-stock company, corporation, or association that is organized as a for-profit or nonprofit entity, that generates four cubic yards or more of commercial solid waste per week. For purposes of this Article, "business" also includes a multifamily residential dwelling of ~~five~~ 16 units or more that generates four cubic yards or more of commercial solid waste per week.

(5) "Commercial solid waste" means all types of solid waste, ~~including recyclable materials~~ that are generated from businesses as defined in subdivision (4) but does not include waste from single family residences or multifamily units of less than 16 units~~4~~.

(6) "Diversion" or "divert" means activities which reduce or eliminate the amount of solid waste from disposal, as defined in Public Resources Code §40124, and fulfills the requirements of §41783 of the Public Resources Code, ~~but for the purposes of this Articles does not include transformation, as defined in Public Resources Code §40201.~~ Materials sent to transformation

facilities must meet the requirements of §41783(a)(2) of the Public Resources Code regarding front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent possible.

(7) "Disposal" means the final disposition of solid waste at a permitted landfill.

(8) "Franchise" means any ~~contract, license or~~ agreement between a jurisdiction and a hauler for transporting commercial solid waste.

(9) "Hauler" means any person, ~~or commercial~~ or public entity which collects, hauls, or transports solid waste for a fee by use of any means, including but not limited to, a dumpster truck, roll off truck, side-load, front-load, or rear-load garbage truck, or a trailer.

(10) "Landfill" means a permitted disposal site which accepts solid waste.

(11) "Mixed Waste Processing" means processing solid waste that contains both recyclable materials and trash and yields diversion results comparable to source separation.

(12) "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place, as defined in ~~Public Resources Code~~ §40180 of the Public Resources Code. ~~Recycling does not include transformation as defined in Public Resources Code §40201.~~

(13) “Recycling services” means services consistent with state or local laws or requirements, including a local ordinance or agreement, which provide for the collection and handling of recyclables.

(14) “Recycling facility” means a recycling, composting, materials recovery or re-use facility that is fully licensed, certified and eligible under federal, state and local laws and regulations and includes those facilities that receive, process, compost, and transfer to market recyclable and/or compostable materials that have been separated from the solid waste stream. The recycling facility may be located at a landfill operation site. Recycling facility includes a mixed waste processing facility.

(15) “Recyclables” and “recyclable materials” means materials that have been separated from the solid waste stream prior to disposal and returned for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place and that are not land-filled. Recyclable materials can include, but are not limited to paper, plastics, glass, metals, cardboard, organics, food waste, and construction and demolition materials.

(16) “Rural city” or “rural county” means a city or county that is located in a rural county as defined in §40184 of the Public Resources Code.

(17) “Self hauler” or “self hauling” means a business that transports its own waste and/or recyclables rather than contracting with a hauler for that service.

(18) “Source separating” or “source separation” means the process of removing recyclable materials from solid waste at the place of generation,

prior to collection, and placing them into separate containers that are separately designated for recyclables.

(19) "Solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes as described in §40191 of the Public Resources Code.

## **§9XXX2. Mandatory commercial recycling by businesses.**

a) On or before July 1, 2012, ~~the owner or operator of~~ a business, as defined in §9XXX1 (b)(4), shall, consistent with local requirements, recycle its commercial solid waste by taking one of the following actions:

(1) Source separating recyclable materials from the solid waste they are discarding and either self-hauling, or subscribing to a service that hauls, the recyclable materials separately from the solid waste to divert them from disposal; or

(2) Subscribing to an alternative type of recycling service that includes mixed waste processing that diverts recyclable materials from disposal and that yields diversion results comparable to source separation.

b) If that alternative service takes waste to a transformation facility, and as long as the existing requirement in §41783 of the Public Resources Code for front-end

processing to remove recyclable materials to the maximum extent feasible is met, then utilization of that service will be in compliance with this Section. If that alternative service takes waste directly to a transformation facility without front-end processing, then utilization of that service will be in compliance with this Section, where it has been determined that those loads are of such a nature that they contain a small amount of recyclables or would contaminate the recyclables in other loads. Each business shall be responsible for ensuring and demonstrating its compliance with the requirements of this Section.

- c) This Section does not limit the authority of a jurisdiction to adopt, implement, or enforce a recycling program that is more stringent or comprehensive than the requirements of this Section. Businesses located in such a jurisdiction are required to comply with any local requirements that have been enacted.
- (d) This Section does not modify or abrogate in any manner any of the following:
  - (1) A franchise granted or extended by a city, county, or other local government agency;
  - (2) A ~~contract, license, or~~ permit to collect solid waste granted or extended by a city, county, or other local government agency as of the effective date of this regulation; or
  - (3) The right of a business to sell or exchange its recyclable materials at fair market value, for reuse or recycling , or to donate its recyclable materials to another entity for reuse or recycling as provided by **Section §41952** of the Public Resources Code. Nothing in these regulations is intended to prevent or otherwise regulate the sale or donation of recyclable

materials by the owner of such materials to a third party for purposes of reuse or recycle prior to discarding the materials.

### **§9XXX3. Implementation of commercial recycling program by jurisdictions.**

- (a) Effective July 1, 2012, each jurisdiction shall implement a commercial recycling program which diverts commercial solid waste generated by businesses, as defined in §9XXX1 (b)(4).
- (b) The commercial recycling program shall apply to businesses, as defined in §9XXX1(b)(4), but may also apply to any other commercial entity identified by the jurisdiction as being a source of recyclable materials.
- (c) A jurisdiction shall determine the specific material types included in its commercial recycling program, which could include, but are not limited to, paper, plastics, glass, metals, organics, food waste, construction and demolition and cardboard.
- (d) If, prior July 1, 2012, a jurisdiction has implemented a commercial recycling program that meets the requirements of this Article, the jurisdiction will not be required to implement a new or expanded program.
- (e) If, in order to satisfy the requirements of this Article, a jurisdiction has to implement a new, or expand an existing, commercial recycling program, it shall not be required to revise its source reduction and recycling element nor comply with the requirements of Public Resources Code §41800 et seq. The

jurisdiction shall include the addition or expansion of a commercial recycling program in its electronic annual report.

- (f) The recycling program adopted pursuant to Subdivision (a) may include, but is not limited to, implementing a commercial recycling policy or ordinance requiring businesses, as defined in §9XXX1(b)(4), to recycle, requiring a mandatory commercial recycling program through a franchise agreement or contract, or requiring that commercial solid waste from businesses be sent to a mixed waste processing facility.

~~(g) The commercial recycling program shall apply to businesses, as defined in §9XXX1(b)(4), but may also apply to any other commercial entity identified by the jurisdiction as being a source of recyclable materials.~~

- ~~(h)~~(g) The commercial recycling program shall include education and outreach to businesses, as defined in §9XXX1 (b)(4). The jurisdiction shall determine the types of educational and outreach programs to insure that the program targets the components of the jurisdiction's commercial waste stream.

- ~~(i)~~(h) The commercial recycling program shall include identification and monitoring of businesses, as defined in §9XXX1 (b)(4), to assess if businesses are subscribing to recycling services and participating in recycling services. If any businesses subject to these regulations are not in compliance with these provisions, the jurisdiction shall, at a minimum, notify those businesses that they are out of compliance.

- ~~(j)~~(i) The recycling program may also include but is not required to include:

(1) Enforcement consistent with a jurisdiction's authority, including, but not limited to, a penalty or fine structure that, ~~consistent with a jurisdiction's authority~~, incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution. Any fees or penalties generated by the enforcement program could, in the jurisdiction's discretion, ~~shall~~ be used to pay the costs of operation, outreach, education, and other associated program costs;

(2) Building design standards that specify space requirements for storage of recyclables or other purposes that may assist the compliance of businesses, as defined in §9XXX1 (b)(4), with the program;

(3) Exemptions deemed appropriate by the jurisdiction such as, but not limited to, zoning requirements, lack of storage space, lack of markets, non-generation of recyclable materials, or current implementation by a business of actions that result in recycling of a significant portion of its commercial waste; or

(4) Certification requirements for self-haulers which may include, but are not limited to, requiring businesses, as defined in §9XXX1 (b)(4), to maintain written records demonstrating that all self-hauling activities have been completed in accordance with the standards imposed by the jurisdiction's commercial recycling program.

~~(k)~~(i) \_\_\_\_\_ Each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, identification and monitoring, and if applicable enforcement efforts, by providing updates in its

electronic Annual Report required by §41821, et seq. of the Public Resources Code.

(H)(k) \_\_\_\_\_ The recycling program implemented by the jurisdiction does not limit the existing right of any business to sell or exchange its recyclable materials at fair market value, for reuse or recycling, or to donate its recyclable materials to another entity for reuse or recycling. Nothing in these regulations is intended to prevent or otherwise regulate the sale or donation of recyclable materials by the owner of such materials to a third party for purposes of reuse or recycle prior to discarding the materials.

#### **§9XXX4. CalRecycle Review**

- (a) Commencing August 1, 2013, CalRecycle shall review a jurisdiction's compliance with §9XXX3 as part of its review of the jurisdiction's source reduction and recycling element and household hazardous waste element programs, pursuant to 14 California Code of Regulations §18772 and §41825 of the Public Resources Code.
- (b) CalRecycle may also review whether a jurisdiction is in compliance with §9XXX3 at any time that CalRecycle receives information that a jurisdiction has not implemented, or is not making a good faith effort to implement, its commercial recycling program.
- (c) During its review pursuant to this Section, CalRecycle shall determine whether each jurisdiction has made a good faith effort to implement its selected commercial recycling program. For this purpose, "good faith effort" means all

reasonable and feasible efforts by a jurisdiction to implement its commercial recycling program. During its review, CalRecycle may include, but is not limited to, the following factors in its evaluation of a jurisdiction's "good faith effort":

- (1) the extent to which the businesses, as defined in §9XXX1(b)(4), have subscribed to recycling services, including information on the amount of disposal that is being diverted from the businesses, if available, and on the number of businesses that are subscribing to service;
- (2) the recovery rate of the commercial waste from the material recovery facilities that are utilized by the businesses, all information, methods, and calculations, and any additional performance data, as requested by the Department from the material recovery facilities pursuant to 14 California Code of Regulations §18809.4;
- (3) the extent to which the jurisdiction is conducting education and outreach to businesses, as defined in §9XXX1 (b)(4);
- (34) the extent to which the jurisdiction is monitoring businesses, as defined in §9XXX1 (b)(4), and notifying those businesses that are out of compliance; ~~and~~
- (45) the availability of markets for collected recyclables;
- (6) budgetary constraints; and,

(7) in the case of a rural city or rural county as defined in §9XXX1(b)(16), the small geographic size or low population density.

A jurisdiction's failure to implement its commercial recycling ~~plan~~program may be a sufficient basis for issuance of a compliance order pursuant to ~~Public Resources Code~~ §41825 of the Public Resources Code, even if the jurisdiction has met its 50% per capita equivalent disposal target as required by §41780.05 of the Public Resources Code.

- (d) If, after a public hearing on the matter, CalRecycle finds that a jurisdiction has failed to make a good faith effort to implement a commercial recycling program and meet the requirements of §9XXX3, CalRecycle shall issue a compliance order with a specific schedule for achieving those requirements. CalRecycle shall issue the compliance order within 30 days after making its finding of non-compliance.
- (e) The compliance order shall identify the portions of the commercial recycling program which are not being implemented or attained by the jurisdiction, or identify areas of the commercial recycling program which need revision. CalRecycle shall also set a date by which the jurisdiction shall meet the requirements of the compliance order.
- (f) Pursuant to ~~Public Resources Code~~ §41850 of the Public Resources Code, CalRecycle shall hold a hearing to determine whether the jurisdiction has complied with the terms of the compliance order in §9XXX4(d). If CalRecycle determines that the jurisdiction has failed to make a good faith effort to

implement its commercial recycling program and meet the requirements of §9XXX3, CalRecycle may impose administrative civil penalties upon the jurisdiction of up to ten thousand dollars (\$10,000.00) per day until the jurisdiction implements the program as provided by §41850 of the Public Resources Code.

**§9XXX5. State Air Resources Board Oversight and Enforcement**

Nothing in this ~~A~~article limits the ~~state-Air Resources b~~Board's authority pursuant to Division 25.5 (commencing with §38500 of the Health and Safety Code), to monitor compliance with and enforce this regulation. The ~~state-Air Resources B~~board retains its oversight role and will take any further actions necessary to implement this regulation, including but not limited to invoking its enforcement authority as described in §38580 of the Health & Safety Code.